

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDAG ENGINEERING GMBH,

Plaintiff,

v.

BYTON NORTH AMERICA
CORPORATION,

Defendant.

Case No. [21-cv-04736-EMC](#)

**ORDER GRANTING PLAINTIFF'S *EX PARTE* APPLICATION FOR ORDER
OF APPEARANCE AND
EXAMINATION**

Docket No. 70

I. INTRODUCTION

Before the Court is Plaintiff and judgment creditor EDAG Engineering GmbH's ("EDAG") application for a judgment debtor examination. EDAG requests that the Court order Defendant and judgment debtor Byton North America Corp. ("BNA") to appear for examination to help EDAG identify and locate its assets. *Id.* For the reasons set forth below, the Court determines that the matter is suitable for decision without oral argument and orders one or more officers, directors, managing agents, or other persons who are familiar with the property and debts of BNA to appear personally to furnish information to aid in the enforcement of a money judgment by answering questions about BNA's property.

II. BACKGROUND

On December 13, 2021, a judgment was entered against BNA and in favor of EDAG in the amount of approximately \$30,000,000.00. *See* Docket No. 49. On December 27, 2021, EDAG filed an application and request for an order for the appearance and examination of BNA using California Judicial Council Form AT-138/EJ-125. *See* Docket No. 70 ("Application"). During a hearing held on January 6, 2022, the Court directed BNA to file any response to the application, if

there is any, by January 7, 2022. BNA has not filed a response by this date.

III. DISCUSSION

Federal Rule of Civil Procedure 69(a) governs the enforcement of judgment proceedings in federal courts. *Hilao v. Estate of Marcos*, 95 F.3d 848, 851 (9th Cir. 1996). Rule 69(a) provides:

- (1) Money Judgment; Applicable Procedure. A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.
- (2) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person--including the judgment debtor--as provided in these rules or by the procedure of the state where the court is located.

Fed. R. Civ. P. 69(a)(1)&(2).

EDAG proceeds under Cal. Civ. Proc. Code § 708.150(a)&(c). *See* Application. Rule 69(a)'s deference to state procedural rules make consideration under Cal. Civ. Proc. Code § 708.150(a)&(c) proper. *See Moore v. Chase, Inc.*, No. 1:14-CV-01178-SKO, 2016 WL 4548751, at *1 (E.D. Cal. Sept. 1, 2016); *see also Gordon v. Vitalis Partners, LLC*, No. 2:10-MC-00070 WBS, 2012 WL 161033, at *1 (E.D. Cal. Jan. 18, 2012).

Pursuant to Cal. Civ. Proc. Code §708.110, et seq., the judgment creditor may obtain an order requiring the judgment debtor to appear at the courthouse to furnish information that will aid in the enforcement of the money judgment. *See Hooser v. Sup.Ct. (Ray)*, 84 Cal. App. 4th 997, 1002 (2000) (citing Cal. Civ. Proc. Code §708.110(a)).

California Code of Civil Procedure § 708.110 provides in relevant part:

- (a) The judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to furnish information to aid in enforcement of the money judgment.
- (b) If the judgment creditor has not caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make an order upon ex parte application of the judgment creditor.

(c) If the judgment creditor has caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order if the judgment creditor by affidavit or otherwise shows good cause for the order. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, it may be made *ex parte*.

(d) The judgment creditor shall personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for examination. Service shall be made in the manner specified in Section 145.10. Service of the order creates a lien on the personal property of the judgment debtor for a period of one year from the date of the order unless extended or sooner terminated by the court.

(e) The order shall contain the following statement in 14-point boldface type if printed or in capital letters if typed: “NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney's fees incurred by the judgment creditor in this proceeding.”

Cal Civ. Proc. Code § 708.110(a)–(e).

Additionally, Cal. Civ. Proc. Code § 708.160(a) provides that “[e]xcept as otherwise provided in this section, the proper court for examination of a person under this article is the court in which the money judgment is entered.” Cal. Civ. Proc. Code, § 708.160(a).

Here, judgment was entered by this Court on December 13, 2021 and EDAG has not caused the judgment debtor to be examined under this section during the preceding 120 days. *See* Docket No. 49. As such, EDAG’s application meets the requirements set forth in Cal. Civ. Proc. Code §§ 708.110(a) and 708.160, and the Court may enter an order in favor of EDAG’s *ex parte* application under § 708.110(b).

Because BNA is a corporation, Cal. Civ. Proc. Code § 708.150, which pertains to an order for examination of a corporation, partnership, etc., is relevant. Section 708.150 sets forth that:

(a) If a corporation, partnership, association, trust, or other organization is served with an order to appear for an examination, it shall designate to appear and be examined one or more officers, directors, managing agents, or other persons who are familiar with its property and debts.

(b) If the order to appear for an examination requires the appearance of a specified individual, the specified individual shall appear for the examination and may be accompanied by one or more officers, directors, managing agents, or other persons familiar with the property and debts of the corporation, partnership, association, trust,

or other organization.

(c) If the order to appear for the examination does not require the appearance of a specified individual, the order shall advise the corporation, partnership, association, trust, or other organization of its duty to make a designation under subdivision (a).

(d) A corporation, partnership, association, trust, or other organization, whether or not a party, may appear at an examination through any authorized officer, director, or employee, whether or not the person is an attorney.

Cal. Civ. Proc. Code § 708.150. Here, EDAG's application does not require the appearance of a specific individual. *See* Docket No. 70. Accordingly, BNA "shall designate to appear and be examined one or more officers, directors, managing agents, or other persons who are familiar with its property and debts." Cal. Civ. Proc. Code § 708.150(a).

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** EDAG's Application as follows:

1. Defendant/judgment debtor BNA shall designate one or more officers, directors, or managing agents who are familiar with BNA's property and debts, and shall appear personally for a debtor's examination before a Magistrate Judge to be assigned by the Court at a time, date and place to be determined by that Magistrate Judge to furnish information to aid in enforcement of a money judgment by answering questions about the Defendant/judgment debtor's real and person property; and

2. Plaintiff/judgment creditor EDAG must serve this order upon Defendant/judgment debtor BNA personally not less than 10 days before the date set for the examination and must file a certificate of such service with the Court.

This order disposes of Docket No. 70.

IT IS SO ORDERED.

Dated: January 10, 2022

EDWARD M. CHEN
United States District Judge